

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

**CCMH CORONADO, LLC D/B/A CORONADO
ISLAND MARRIOTT RESORT & SPA**

Employer

and

Case 21-RC-256355

UNITE HERE LOCAL 30

Petitioner

DECISION AND ORDER

On February 14, 2020, UNITE HERE Local 30 (Petitioner)¹ filed a petition with the National Labor Relations Board (Board) seeking to represent all full-time, part-time, and on-call² employees classified as banquet captains, banquet servers, banquet bartenders, lead banquet housemen, and banquet housemen employed by CCMH Coronado, LLC D/B/A Coronado Island Marriott Resort & Spa (Employer or Hotel) at its facility located at 2000 2nd Street, Coronado, California 92118.

The Employer contends that the petitioned-for unit is not an appropriate unit, and that an appropriate unit must also include all restaurant department employees and all employees classified as restaurant supervisor, restaurant servers, restaurant bartenders, dining room attendants, food runners, aisle attendants, hosts/hostesses, pool bar servers, pool bar bartenders, lead gourmet coffee attendants, and gourmet coffee attendants, who were excluded from the petitioned-for unit.³

A Hearing Officer of the Board held a hearing in this matter on February 27 and 28, and March 2 and 3, 2020, and thereafter the parties submitted briefs.⁴ As explained below, based on the record, the briefs, and relevant Board law, I find that the petitioned-for unit is not an appropriate unit because it does not include the restaurant supervisor, restaurant servers, restaurant bartenders, dining room attendants, food runners, aisle attendants, hosts/hostesses, pool bar servers, pool bar bartenders, lead gourmet coffee attendants, and gourmet coffee attendants.⁵

¹ The parties stipulated that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

² On-call status is categorized by the Employer as pool-status, discussed below.

³ The correct job classification title in the Employer's initial position statement for 'busser' is 'aisle attendant.' The terms 'restaurant' and 'pool bar' delineate where these job classifications work. Whether 'restaurant supervisor' is a supervisor under Section 2(11) of the Act was not litigated or contested during the hearing.

⁴ The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

⁵ The parties stipulated, and I find, that the Employer, CCMH Coronado, LLC d/b/a Coronado Island Marriott Resort & Spa, a Delaware limited liability company, with a facility located at 2000 2nd Street, Coronado, California, the only facility involved in this matter, is engaged in the operation of a hotel providing lodging and banquet services for its guests. During the past 12 months, a representative period, the Employer derived gross revenues in excess of \$500,000 from all performance of services at its Coronado, California facility and purchased and received

Accordingly, I have concluded that an appropriate unit includes all full-time, regular part-time, and on-call banquet captains, banquet servers, banquet bartenders, lead banquet housemen, banquet housemen, restaurant supervisor, restaurant servers, restaurant bartenders, dining room attendants, food runners, aisle attendants, hosts/hostesses, pool bar servers, pool bar bartenders, lead gourmet coffee attendants, and gourmet coffee attendants employed by the Employer at its facility currently located at 2000 2nd Street, Coronado, California 92118.

I. Facts

A. The Employer's Operation

The Employer is a 300-room resort hotel located on Coronado Island in San Diego, California. Aside from lodging, the Employer provides fitness facilities, pool/spas, dining, and facilities for customers to hold banquets, events where large numbers of guests are served food and drinks. A single centralized kitchen provides all food for the Hotel with the exception of the pastry shop and garmache.⁶ A single cafeteria serves as the Hotel's breakroom.

Within the Employer's organizational hierarchy, General Manager Jonathan Litvack oversees the Hotel by way of five divisions: Operations, Engineering, Finance & Accounting, Human Resources, and Resort Experience.⁷ Directors lead the divisions and are referred to as executive committee members.

1. Operations Division

Director Ricardo Garcia leads the Operations Division. Within the Operations Division are five departments: Event Planning & Operations, Culinary,⁸ Services, Restaurants, and Front Office.⁹

a. Event Planning & Operations Department

The Event Planning & Operations Department (Event Department) plans and fulfills customer-ordered events and banquets. Manager Indira Guevara leads the Event Department. Typical customer-ordered events include weddings, meetings, receptions, and conventions. The Event Department holds customers' events or banquets at various locations throughout the Hotel's property, including ballrooms on the second floor, rooms of various sizes on the first and second floors, open areas of the Hotel, and at the Hotel's dine-in restaurant and pool area.

at its Coronado, California facility, goods valued in excess of \$5,000 directly from points outside the State of California. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.

⁶ Garmache is a cold-food, dish-preparation room

⁷ The divisions of Engineering, Finance & Accounting, and Resort Experience provide little information for determining the issues presented in this matter and are not discussed or analyzed in this decision.

⁸ The Employer's organizational chart lists this department as 'Executive Chef.'

⁹ The Culinary, Services, and Front Office departments provide little information in determining the issues presented in this matter and are not discussed or analyzed further in this decision.

i. Banquet Department

Within the Event Department is another department, the Banquet Department, led by Banquet Manager Alex Groupe. The Banquet Department specializes in facilitating customer banquets. This department employs the following job classifications: banquet captains, banquet servers, banquet bartenders, lead banquet housemen, and banquet housemen.

b. *Restaurants Department*

Director Pepe Aparicio leads the Restaurants Department. The Restaurants Department consists of four food outlets: a dine-in restaurant named Albaca, a pool bar named Auga, a Starbucks coffee outlet (Coronado Exchange), and in-room dining services.¹⁰

i. Albaca

Albaca is a dine-in restaurant that includes a bar and a patio area for outdoor dining. Albaca serves breakfast, lunch, and dinner. Albaca is directly opposite from the lobby and employs the following job classifications: restaurant supervisor, dining room attendants, restaurant bartenders, restaurant servers, aisle attendants, host/hostesses, and food runners.

ii. Auga

Auga is a bar located near the Hotel pool and the pool-side lawn. Auga provides drinks and a limited set of food options to customers. It typically operates only in the summer season. The job classifications utilized at Auga are pool bar server and pool bar bartender.

iii. Coronado Exchange

The Coronado Exchange is a shop that sells Starbucks coffee and food. The Coronado Exchange is located in between the lobby and Albaca. The Coronado Exchange employs the job classifications lead gourmet coffee attendant and gourmet coffee attendant.

2. Human Resources Division

Director Lizeeth Santiesteban leads the Human Resources Division. The Human Resources Division maintains a single employee handbook that applies to all employees and it serves as the only location for the employees to receive their paychecks manually.

Regarding hiring and discipline in a particular division, the executive committee member, with input from the Department manager or supervisor, and Human Resources, exercise authority on these issues. Regarding terminations, in addition to the same approving authorities in hiring and discipline situations, the Hotel General Manager's input is also required.

¹⁰ The job classification "in-room dining server" is not a disputed classification in this matter.

B. Job Classifications in Dispute

1. Banquet Department employees

Banquet Department employees work wherever customer events are held within the Hotel property, and include events held at Albaca, or areas located near to Auga and the pool. According to the record, the Banquet Department employees set tables and stations for events, and prepare food and drinks for serving. In general, Banquet Department employees communicate with customers during events, bus tables, monitor the cleanliness of tables and stations, and replenish food and drinks as appropriate. All of the job classifications in the petitioned-for unit maintain an overlap in duties. However, each Banquet Department job classification holds a unique role. Banquet captains oversee banquets and supervise the Banquet Department employees. Banquet servers primarily bring food and drinks to and from the banquet event, while Banquet bartenders prepare drinks for banquet attendees. The Banquet housemen primarily set-up and break down banquet furniture and facilities.

Banquet Manager Groupe manages the day-to-day operations and scheduling in the Banquet Department. He provides employee performance reviews to any employee who works at a banquet event, including employees from other departments that work the event. Banquet Manager Groupe does not have the unilateral authority to hire, fire, or discipline employees. Rather, Banquet Manager Groupe effectively recommends employment actions to Director Garcia and Director Garcia may at times either take unilateral action or may confer with Human Resources or the Hotel's General Manager.

Banquet Department employees require no particular skill or training. The general skills required include being able to carry trays of food and drink to and from the kitchen to customer locations, basic cleaning ability, and general customer-service and interpersonal skills. Banquet Department employees are not expected to engage heavily in conversation with customers. Banquet Department employees are required to obtain a food handler's certificate and a TIPS certificate.¹¹ The petitioned-for unit job classifications only require a high school degree, at most.

Banquet Department employees have irregular work schedules. The Banquet Department employees' shifts depend on what time of day customers seek to hold an event, which can occur at any time and for varying durations. Because of the unpredictable nature of banquet events, the Hotel maintains a large number of Banquet Department employees in pool-status, as opposed to full-time or part-time status, known in the industry as on-call. The Hotel doesn't ask for any preexisting availability from these employees, and the Hotel works with the employees to give them shifts when the employees are available and willing to work. Banquet Department shift schedules are posted on the second floor, outside the Banquet office.

Banquet Department employees are paid an hourly wage and a gratuity. The gratuity is based on a set percentage of a customer-event's total cost, which is then proportionally broken

¹¹ The record did not reveal what the abbreviation TIPS means. TIPS is a certificate related to the responsible serving of alcohol.

up based on a point system corresponding to the job classifications of the employees who worked at the event. The Employer manages the gratuity distribution for the participating employees. Banquet Department employees wear standardized uniforms for their department. Banquet Department employees may enroll in the Employer's 401(k) retirement plan and receive Hotel discounts. Full-time and part-time Banquet Department employees are eligible for health benefits and paid time off.

2. Albaca employees

Albaca employees perform tasks similar to those of the Banquet Department employees, such as carrying food and drinks to customer locations, communicating meal requests, and clearing tables. Albaca employees are typically restricted to the restaurant, although in situations where the Hotel sponsors events such as Lunar New Year or Fourth of July celebrations, Albaca employees will work at different locations in the Hotel to staff the events.

Albaca employees are expected to explain dishes to and take orders from customers, and process sales transactions through a computer system known as Micros. As with the Banquet Department job classifications, Albaca job classifications maintain a unique characteristic for each position. The restaurant supervisor is tasked with coordinating Albaca employees' labor and services.¹² Dining room attendants primarily set up tables and assist servers with bringing food to customers. Restaurant bartenders primarily create mixed drinks. Restaurant servers take orders from customers, serve customer-ordered food, and collect the payments. Aisle attendants ensure that buffet items in Albaca are kept replenished. The host/hostess greet customers, seat customers, and answer questions regarding menu items. Food runners take food from the kitchen to the tables.

Director Aparicio supervises Albaca employees and conducts employee-performance reviews. His roles and responsibilities are similar to those of Banquet Manager Groupe. Albaca employees require roughly the same skill and training as Banquet Department employees, but Albaca employees do require more customer-service skills than Banquet Department employees, as their interactions with customers are more frequent. Albaca employees are also required to obtain a food handler's certificate and a TIPS certificate.

Albaca employees have set schedules based on the hours of operation for the restaurant. The shifts are staggered to serve morning, afternoon, and evening customer traffic. The shift an Albaca employee can expect to work may change depending on customer-traffic forecasts. Albaca shift schedules, as well as the other food outlets in the Restaurants Department, are posted on the first floor. There is no pool-status for Albaca employees. The restaurant director conducts their performance reviews.

Albaca employees are paid a flat hourly wage-rate, and certain classifications receive a gratuity. Among the disputed job classifications in Albaca, host/hostess and restaurant supervisor are non-tipped positions. Typically, the gratuity is based on customer preference,

¹² Very little testimony was presented regarding the restaurant supervisor position.

with the exception being when customers dine in groups of six or more. In that circumstance, the Employer applies an automatic 18% gratuity to the final bill. The Hotel maintains guidelines for servers to 'tip out', a practice of sharing approximately 8% of their earned gratuity with other Albaca employees who support them. The onus of tipping out falls on the employee receiving the gratuity. No evidence was presented on whether this practice is strictly adhered to, or what percentage of gratuity is actually tipped out. Albaca employees wear distinct uniforms from other Hotel employees. Like the Banquet Department employees, Albaca employees enjoy the same benefits and are subject to the same employee handbook and Human Resource policies as the petitioned-for unit and the Employer-proposed additional job classifications.

In the event a customer books part or all of Albaca for a private banquet event, Albaca employees will work the event in tandem with the Banquet Department employees. Albaca employees report to the Banquet Department team leadership facilitating the event during these collaborative events. Albaca employees are given a Banquet Department uniform to wear during the event and the Albaca employees take a percentage of the service fee rather than being tipped individually by the customer. The same is true in situations when the Hotel does not have enough Banquet Department employees to staff a banquet, in which case Albaca employees are used to backfill their staffing needs. The Banquet Department team leadership must accurately record Restaurants Department employees' work time in the Banquet Department, in order for them to receive a share of the service fee, which the Employer admits does not always occur. Lastly, instances of Albaca employees transferring full-time to the Banquet Department were identified in the record.

3. Auga employees

Auga employees mirror Albaca employees in almost every aspect regarding skills and job function. A distinction between Auga and Albaca employees is that Auga employees are primarily tasked with serving food and beverages to customers at the Hotel pool. Also, the food options available at Auga are limited compared to those available at Albaca. Because access to the pool is seasonal, when the pool is closed Auga employees are reassigned to the Hotel bar. The two job classifications at Auga are server and bartender. Both classifications mirror their Albaca counterparts. Food for Auga customers is obtained from the Hotel's kitchen.

Director Aparicio supervises the Auga employees in the same manner as he does the Albaca employees. Auga employees also work in other food outlets, such as Albaca and in the Banquet Department.

The Auga server and bartender are hourly wage and tipped positions. Auga employees maintain a set schedule. There is no pool-status for Auga employees. Auga employees wear distinct uniforms from those worn by other Hotel employees.

4. Coronado Exchange employees

Coronado Exchange employees are primarily tasked with preparing and selling Starbucks brand beverages and food. They require general customer-service skills, food-preparation skills,

setting up and stocking the work area, cleaning, and processing customer transactions. Coronado Exchange employees also utilize and process payments through the Micros system. Coronado Exchange employees do not serve alcohol. Unlike the other food outlets and the Banquet Department, the Coronado Exchange employees do not appear to obtain food from the Hotel kitchen regularly, if at all.

Director Aparicio supervises the Coronado Exchange employees in the same manner as he does the Albaca and Auga employees. Coronado Exchange employees also work in a limited capacity at other food outlets, such as Albaca and in the Banquet Department.

Distinct from the other job classifications discussed, Coronado Exchange employees are trained by Starbucks representatives on how to prepare Starbucks beverages. Coronado Exchange employees are also required to obtain a food handler's certificate and a TIPS certificate.

Both the lead gourmet coffee attendant and gourmet coffee attendant positions are hourly wage, non-tipped positions. Coronado Exchange employees maintain a set schedule. There is no pool-status for the Coronado Exchange employees. The Coronado Exchange employees wear distinct uniforms from those worn by other Hotel employees. They also receive the same benefits as other employees in the Restaurants Department and are subject to the same employee policies and handbook.

II. Discussion

A. An appropriate unit must include Albaca, Auga, and Coronado Exchange employees, as there are similar job skills, terms and conditions of employment, and interchange among the Restaurants Department employees and the Banquet Department employees, which negate finding a distinct community of interest in the petitioned-for unit.

When an employer contends that the smallest appropriate unit must include additional employees, the Board traditionally applies a multi-factor test to determine whether the employees in the petitioned-for group share a community of interest sufficiently distinct from the employees excluded from the petitioned-for group, to warrant a finding that the proposed group constitutes a separate appropriate unit. *PCC Structural, Inc.*, 365 NLRB No. 160, slip op. at 5 (2017) (overruling *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013)). This community-of-interest test requires the Board to determine:

[W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

*PCC Structural*s, 365 NLRB No. 160, slip op. at 5 (citing *United Operations, Inc.*, 338 NLRB 123, 123 (2002)).

Recently, the Board has articulated a new “three-step process” for determining an appropriate unit under its traditional community-of-interest test:

First, the proposed unit must share an internal community of interest. Second, the interests of those within the proposed unit and the shared and distinct interests of those excluded from that unit must be comparatively analyzed and weighed. Third, consideration must be given to the Board’s decisions on appropriate units in the particular industry involved.

The Boeing Company, 368 NLRB No. 67, slip op. at 3 (2019).

Together, the *Boeing* decision in conjunction with the *PCC Structural*s decision serve as the framework for determining an appropriate bargaining unit. *Boeing* sets forth the three-step process.

1. The job classifications in the petitioned-for unit have a shared internal community of interest, satisfying *Boeing*’s first-step analysis.

The first step under *Boeing*’s three-part test is identifying the shared interests among members of the petitioned-for unit. 368 NLRB No. 67, slip op at 3. The manner of identifying shared interests is the same as those articulated in *PCC Structural*s. *Id.* The traditional community-of-interest standard is not satisfied if the interests shared by the petitioned-for employees are too disparate to form a community of interest within the petitioned-for unit. *Id.*

- a. *The petitioned-for unit contains all job classifications congruent with the Hotel’s Banquet Department operations.*

The petitioned-for unit conforms to an administrative grouping of the Employer. All job classifications in the petitioned-for unit are assigned to the Banquet Department, a distinct organization within the Event Department. The petitioned-for unit excludes no other job classifications within the Banquet Department that the Employer seeks to add. Hence, this factor weighs in favor of finding an internal community of interest.

- b. *The petitioned-for unit job classifications are functionally integrated to the Employer’s banquet-hosting services.*

The job classifications in the petitioned-for unit serve as an integrated team to conduct banquet events. All of the petitioned-for unit job classifications are necessary to hold a banquet event. Housemen set up banquet furniture, facilities, and help clean the event as it progresses. Banquet servers bring food and drinks to and from the event. Bartenders prepare drinks for banquet guests. Banquet captains supervise the Banquet Department employees before, during,

and after the banquet. Each job classification serves an integral function during banquet events. Hence, the petitioned-for unit's functional integration into the Employer's Banquet Department satisfies this community-of-interest factor.

- c. Banquet Department employees frequently perform other petitioned-for unit job classification duties aside from their own separate job classification duties.*

The record revealed that the job classifications in the petitioned-for unit are all responsible for ensuring that banquet events are cleaned, stocked, and presentable. The petitioned-for unit job classifications are in constant contact with one another while conducting banquets. Not only do the petitioned-for unit job classifications see each other while working, but they also see each other during their breaks in the shared cafeteria. The job classifications, while having some subtle unique differences, do not vary much. The exception to interchange among the employees is the bartender classification, which requires some skill and knowledge of mixing drinks. However, minor differences do not necessitate finding against a community of interest. Accordingly, the evidence weighs in favor of finding this factor supporting a community of interest in the petitioned-for unit.

- d. The petitioned-for unit job classifications are all supervised by Banquet Manager Groupe.*

Employees in the petitioned-for unit are supervised by a single manager, Banquet Manager Groupe. He develops schedules for the Banquet Department, recommends hiring, terminations, and discipline, and gives performance evaluations for the employees in the petitioned-for unit. However, Banquet Manager Groupe does not have the final authority to hire, fire, or discipline employees. That authority is vested in Operations Director Garcia. Nevertheless, the petitioned-for unit has a distinct supervisory chain that is uniform for all petitioned-for unit job classifications. Hence, the common supervision factor weighs in favor of the petitioned-for unit.

- e. The petitioned-for unit's skills are similarly related to serving food and beverages, and preparing facilities for banquet events.*

The skills required in the petitioned-for unit are similar. All the petitioned-for unit job classifications' primary function is directed towards serving food and drinks to large groups of Employer customers, or to the preparation of dining arrangements for customers. All these employees are required to have a food handler's certification and a TIPS certificate. The petitioned-for unit job classifications only require a high school education. Accordingly, the similarity in job skills and function find in favor of an internal community of interest.

- f. The petitioned-for unit shares unique terms and conditions of employment, such as: the gratuity based on service charges, shifts tied to customer events, and common supervision.*

The petitioned-for unit maintains common terms and conditions of employment. First, Banquet Department employees, all hourly wage recipients, receive additional compensation based on a service charge from customers' total banquet-event costs. The service charge is then distributed proportionally based on a point system to the Banquet Department employees working the event. A majority of the Banquet Department employees' wages consist of this gratuity charge, which is not true for any other job classification. Banquet Department employees share the same 401(k) retirement plan, health and dental benefits, employee discounts, and employee-assistance programs.

A majority of the Banquet Department employees hold a work status distinct from any other job classifications at the Hotel: pool-status. Pool-status impacts Banquet Department employees' scheduling as it is directly tied to customer events. Roughly half of the Banquet Department employees are in pool-status.

And as noted above, the petitioned-for unit has the same supervision. Having the same supervision entails the same hiring and training practices, which the record supports. Banquet Department employees wear the same uniforms, which are distinct from those worn by the rest of the Employer's employees. In sum, there is sufficient evidence that terms and conditions of employment in the petitioned-for unit are sufficiently aligned to share a community of interest.

- g. The Boeing step one factor weighs in favor of finding shared interests within members of the petitioned-for unit.*

As noted above, step one of the shared interests among members of the petitioned-for unit weighs in favor of the petitioned-for unit. *Boeing's* first step in assessing community-of-interest issues is to determine whether an internal community of interest exists among the members in the petitioned-for unit. *Boeing*, 368 NLRB No. 67, slip op. at 3. The petitioned-for unit is organized in the Banquet Department, is supervised by a single person, Banquet Manager Groupe.

The skills and certification required for the petitioned-for unit are similar, allowing these employees to complete the same tasks as other job classifications in the petitioned-for unit. The terms and conditions of employment for the petitioned-for unit, such as compensation and employment status (pool-status), are unique among all job classifications. For these reasons, shared interests exist in the petitioned-for unit.

2. Boeing's second-step analysis establishes that the Restaurants Department employees' interests are not sufficiently distinct from the Banquet Department employees' interest to support their exclusion from the petitioned-for unit.

The second step of the *Boeing* analysis is an inquiry as to whether the employees excluded from the unit “have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.” *Id.* slip op. at 4 (citing *PCC Structurals*, 365 NLRB No. 160, slip op. at 11 (quoting *Constellation Brands, U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016))). No single factor or metric is used to evaluate the appropriateness of the unit. *Id.* Rather, based on the community-of-interest factors as whole, the Board assesses whether the factors support the appropriateness of the unit. *Id.* If the interests of the employees excluded from the unit are not sufficiently distinct from those of the petitioned-for unit, then the petitioned-for unit is inappropriate. *Id.*

- a. *The Hotel's food operations rely on the Restaurants Department employees and Banquet Department employees interchange to staff customer events.*

The record reveals evidence of significant employee interchange between the petitioned-for unit and the Employer's proposed additional job classifications. Specifically, the record reveals that many Restaurants Department employees, primarily those in Albaca, although also those in Auga and the Coronado Exchange, work in Banquet Department classifications in addition to their own classifications. Employee work-assignment records reveal significant interchange between the Restaurants Department employees and the Banquet Department employees. Moreover, it is likely that the evidence presented regarding interchange underrepresents the actual occurrence, as it relies on supervisors to accurately capture employees' cross assignment to different departments. Evidence was presented that the interchange can occur spontaneously rather than being planned, such as scheduled employees calling in sick, or unexpected customer attendance, requiring the Hotel to quickly reassign Restaurants Department employees to banquet events.

Additionally, there is evidence of significant work-related contact between the petitioned-for unit and the Employer-proposed additional job classifications, as well as evidence that the two groups of employees work in the same areas. The evidence of work-related contact includes Banquet Department employees and Restaurants Department employees collecting customer food at a single kitchen, working on joint-customer events, such as when customers reserve Albaca or locations near the pool for events, or when the Hotel hosts large public events, such as the Lunar New Year dinner. The record also reveals some evidence of permanent transfers between the Banquet Department and the Restaurants Department.

However, with respect to the Coronado Exchange employees, a lesser amount of evidence suggests that there is regular contact between them and the Banquet Department employees. Unlike employees at Albaca and Auga, and the Banquet Department employees, who have the opportunity to interact when in the kitchen during shifts, no evidence exists to suggest that Coronado Exchange employees venture into the kitchen as part of their duties. Rather, the evidence suggests that the Coronado Exchange employees remain in their outlet for

the duration of their shifts. Moreover, no evidence was presented of other employees replacing Coronado Exchange employees. That is most likely because of the specialized training they receive from Starbucks trainers. However, evidence was presented of Coronado Exchange employees working at Albaca and at the Banquet Department events.

In sum, there is substantial interchange and contact between the Restaurants Department employees working at Albaca and Auga, and the Banquet Department employees, and more limited contact between Banquet Department employees and Coronado Exchange employees. The Employer maintains a highly fluid workforce of food-service employees to satisfy dynamic staffing needs. Thus, factors relating to interchangeability and contact among employees weigh against finding distinct interests between the petitioned-for unit and the Employer-proposed additional job classifications.

b. The Restaurants Department employees and Banquet Department employees share common supervision for administrative functions and when rotating between departments.

The record reveals that the petitioned-for unit is separately supervised from job classifications the Employer seeks to add. The Event Department is led by Director Indira Guevara. And within the Event Department, Banquet Manager Groupe leads the Banquet Department employees. Separate from the Event Department is the Restaurants Department, led by Director Pepe Aparicio. Director Aparicio's roles and responsibilities mirror those of Banquet Manager Groupe's roles and responsibilities.

Inevitably there will be commonality in leadership. In this case, the point of convergence is Director Garcia in his leadership role of the Operations Division. Director Garcia's role is significant because, while Banquet Manager Groupe and Director Aparicio both provide recommendations for hiring, discipline, and termination, Director Garcia's determination effects a result. Only Director Garcia has real authority to hire or fire.

While Banquet Manager Groupe and Director Aparicio's roles are independent of one another, it is not uncommon for either of them to supervise the other's employees when those employees are assigned to a different department. It has been established that the Hotel's food-service employees are highly fluid. In the event an employee is temporarily assigned from Albaca to banquets (or vice versa), the receiving manager will exercise authority over that employee, to include providing input on the employee's performance evaluations for their work at the alternate department. As such, while on a daily basis an employee may not be supervised by another department's supervisor, that is something that an employee can expect when they are regularly tasked with working in a different department. Hence, the centralization of administrative supervision in conjunction with common supervision during interchange of employees weigh against there being distinct interests between the petitioned-for unit and the Employer-proposed additional job classifications.

- c. The primary roles of the Restaurants Department employees and the Banquet Department employees, serving food and beverages to customers, require nearly identical skills and functions.*

The job functions for both the Restaurants Department employees and the Banquet Department employees are nearly identical. All the Employer-proposed additional job classifications' functions are primarily directed towards the serving of food and drinks to the Employer's customers, or the preparation of dining arrangements for customers. As noted above, all employees in the petitioned-for unit and the Employer-proposed additional job classifications require a food handler's certification and a TIPS certificate. The job descriptions for some classifications, such as bartender, are nearly identical for Auga bartenders, Banquet bartenders, and Albaca bartenders.

There is some variety in the employees' roles. Restaurants employees require some degree of salesmanship in recommending dishes to customers, and must input customer purchases into a point-of-sale system. Employees in the Coronado Exchange receive training in the preparation of Starbucks brand coffee. Yet these distinctions are not significant in light of the shared commonality among jobs. In contrast, it is because the skills and job functions of the job classifications are so similar that the Employer is able to quickly reassign employees from different departments to cover various events and assignments. Hence, because employees' skills and functions are so similar between the two departments, it cannot be said that there are distinct interests between the petitioned-for unit and the Employer-proposed additional job classifications.

- d. There is significant overlap in the terms and conditions of employment between the Restaurants Department employees and the Banquet Department employees.*

The Employer-proposed additional job classifications and the petitioned-for unit share common terms and conditions of employment. First, the Restaurants Department employees and the Banquet Department employees are subject to the same benefits. Evidence was presented that both departments' employees, if they average 30 hours of work per week, are entitled to full-time status. Both departments' employees receive the same health and dental benefits, 401(k) retirement plans, discounts on Hotel amenities, and paid time off/sick leave. All the job classifications in these two departments are subject to the same employee handbook policies.

All these job classifications are paid an hourly wage. The distinction in pay between classifications occurs with the payment of a gratuity. Banquet Department employees receive a service-charge based gratuity, and Restaurants (Albaca and Auga) Department employees receive a customer-discretion based gratuity. However, when an employee rotates between the Restaurants Department and Banquet Department, as has been demonstrated, their wage is then modified to reflect that department's gratuity system. This rotation between departments also results in a change of uniforms to correspond with the assigned department.

The hours worked by Restaurants Department employees and Banquet Department employees also differ by the former having a set schedule and the latter being tied to customer events. Again, by way of employee interchange, employees can expect to work in different departments from their own, exposing them to the differing schedules. In this aspect, despite the difference in gratuity, hours, and uniform during various job classifications, Restaurants Department employees and Banquet Department employees can expect to encounter these differences on a regular basis, depending on the staffing needs of each department on a particular date. As such, their weight is in favor of finding non-distinct interests for the Employer-proposed additional job classifications.

e. PCC Structurals' factors weigh in favor of including Albaca, Auga, and Coronado Exchange job classifications into the petitioned-for unit.

In sum, the weight of the factors used to assess whether a distinct community of interest exists do not support excluding the Employer-proposed additional job classifications from the petitioned-for unit. There is evidence of substantial interchange and contact between the job classifications at issue. The interchange and contact between job classifications are made possible by the nearly identical job function and skill requirements of the job classifications in these two departments. All the job classification requires some basic skill in serving food and beverages. These skills are the same whether an employee is working in the Banquet Department or the Restaurants Department, including working at Albaca, Auga, or the Coronado Exchange.

Differences in the organizational structure and functional integration of departments are of little relevance in light of the fact that employees rotate between departments on a regular basis. The Employer maintains a highly fluid workforce that can be modified to meet staffing needs in different departments, regardless of what particular job classification an employee holds. Corresponding with employee interchange, the differences between gratuity payments and uniforms are minor. An employee can expect their pay, hours, and uniform worn to change depending on their assignment, without regard of their actual job classification. In conclusion, I find the interests of the petitioned-for unit and the Employer-proposed additional job classifications are not sufficiently distinct to exclude the latter from the petitioned-for bargaining unit.

3. There is no general appropriate unit in the hotel industry to consider in this matter as it relates to Boeing's third step.

The Board has held that, regarding the hotel and motel industry, it would "consider each case on the facts peculiar to it in order to decide wherein lies the true community of interest among particular employees." *Omni International Hotel*, 283 NLRB 475 (1987), citing *77 Operating Co.*, 160 NLRB 927, 930 (1966), *enfd.* 387 F.2d 646 (4th Cir. 1967). Since the latter decision, the Board has made unit determinations in the hotel and motel industries on a case-by-case basis. As such, general criteria are used for determining an appropriate unit using traditional community-of-interest criteria that are also applied to other industries. *Id.* Thus, no industry-specific appropriate unit exists to consider in the third step of *Boeing's* analysis.

III. CONCLUSION

Applying the holdings in *Boeing* and *PCC Structural*s, I find that the petitioned-for unit does not share a community of interest sufficiently distinct from the interests of the Employer-proposed additional job classifications. The Employer-proposed additional job classifications have similar skills and functions, serving food and beverages, to those of the employees in the petitioned-for unit.

The similarity in skills and job functions of these Employer-proposed additional job classifications are similar to those of the petitioned-for unit, such that the Employer routinely interchanges employees between these departments depending on its staffing needs. In this interchange, the Employer-proposed additional job classifications routinely interact with employees in the petitioned-for unit. In those circumstances, they share common supervision, and similar terms and conditions of employment. While there are some distinctions that weigh against including the Employer-proposed additional job classification into the petitioned-for unit, such as the separation of departments in the Employer's organizational hierarchy, the distinctions are minor in light of the similarities shared. The evidence does not establish a distinct community of interest between the petitioned-for unit, and the Employer-proposed additional job classifications. Accordingly, I find that the petitioned-for unit is inappropriate.

The Petitioner has declined to proceed to an election in any unit other than the petitioned-for unit. Accordingly, I shall dismiss the petition filed in this case.

IV. ORDER

The petition is hereby dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **May 1, 2020**.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.¹³ A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: April 17, 2020.



William B. Cowen, Regional Director
National Labor Relations Board, Region 21
US Court House, Spring Street
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Los Angeles, CA 90012

¹³ On October 21, 2019, the General Counsel (GC) issued Memorandum GC 20-01, informing the public that Section 102.5(c) of the Board's Rules and Regulations mandates the use of the E-filing system for the submission of documents by parties in connection with the unfair labor practice or representation cases processed in Regional offices. The E-Filing requirement went into immediate effect on October 21, 2019, and the 90-day grace period that was put into place expired on January 21, 2020. Parties who do not have necessary access to the Agency's E-Filing system may provide a statement explaining the circumstances, or why requiring them to E-File would impose an undue burden.